

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

NICHOLAS J. CHLEBOWSKI,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	Case no.
	)	
CREDIGY RECEIVABLES, INC.	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**COMPLAINT**

COMES NOW Plaintiff Nicholas J. Chlebowski, by and through his undersigned counsel, and for his Complaint against Defendant Credigy Receivables, Inc. ("Defendant") states to the Court as follows:

**I. INTRODUCTION**

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter the "FDCPA"). The FDCPA prohibits debt collectors from engaging in abusive, deceptive, and unfair collection practices.

**II. JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over Plaintiff's federal claims pursuant to the Fair Debt Collection Practices Act, 15 U.S.C § 1692(k) and 28 U.S.C. §1331. This Court has subject matter jurisdiction over Plaintiff's state claims pursuant to 28 U.S.C. §1337.

3. This Court has jurisdiction over Defendant by virtue of the fact that it is engaged in the business of collecting debts within this judicial district.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391.

### **III. PARTIES**

5. Plaintiff Nicholas J. Chlebowski is an individual residing in Franklin County, Missouri.

6. Plaintiff is a “consumer” as that term is defined by §1692a(3) of the FDCPA.

7. Upon information and belief, Defendant Credigy Receivables, Inc. is a for-profit Nevada corporation, and a “debt collector” within the meaning of 15 U.S.C 1692a(6).

8. Defendant regularly purchases debts allegedly owed by Missouri residents, and attempts to collect these alleged debts by filing lawsuits in various counties within the state of Missouri.

### **FACTS COMMON TO ALL COUNTS**

9. On or about November 5, 2008, Defendant Credigy filed a lawsuit against Plaintiff in the Circuit Court of Franklin County, Missouri, case no. 08AB-AC02464, seeking to recover an alleged debt in the amount of \$1,585.25, arising from an old credit card account with Wells Fargo Bank. A copy of that lawsuit is marked Exhibit A, attached hereto and incorporated herein by reference.

10. Thereafter, Defendant’s attorney obtained a default judgment in the underlying state court case on April 10, 2009. A copy of that default judgment is marked as Exhibit B, attached hereto and incorporated herein by reference.

11. Plaintiff filed a Motion Set Aside the Default Judgment on April 29, 2009. A copy of that Motion is marked as Exhibit C, attached hereto and incorporated herein by reference.

12. On May 4, 2009, the state trial court set aside the default judgment, and the state court action was dismissed by Defendant without prejudice. A copy of that court order is marked as Exhibit D, attached hereto and incorporated herein by reference.

13. Plaintiff's old Wells Fargo account was paid in full on October 29, 2000, some 8 years before Defendant Credigy filed its underlying state court action.

### **COUNT I**

#### **Violation of the Fair Debt Collection Practices Act (15 U.S.C. §1692 *et seq*)**

COMES NOW Plaintiff, by and through his undersigned counsel, and for Count I of his Complaint against Defendant Credigy Receivables, Inc., states as follows:

14. Plaintiff repeats and incorporates the allegations set forth in the paragraphs above as if set forth in full herein.

15. Defendant has violated the Fair Debt Collection Practices Act by pursuing collection activities in the underlying state court action in the following respects:

a. Defendant violated 15 U.S.C. §1692e(15) by using a false representation or deceptive means to collect a debt that had already been paid over 7 years earlier;

b. Defendant violated 15 U.S.C. §§1692e(10) and 1692e(5) by filing a time barred lawsuit against Plaintiff.

c. Defendant violated 15 U.S.C. §1692f by attempting to collect an amount (including interest, fees, charges or expenses incidental to the principle obligation) without any agreement for such charges creating the debt or permitted by law.

WHEREFORE as a result of the above violations of the Fair Debt Collection Practices Act, Plaintiff prays for judgment in favor of Plaintiff and against Defendant for his actual and statutory damages, attorney's fees and costs incurred herein and for such other relief as this Court may deem appropriate under the circumstances.

### **COUNT II**

#### **Abuse of Process**

COMES NOW Plaintiff, by and through his undersigned counsel, and for Count II of his Complaint against Defendant Credigy Receivables, Inc., states as follows:

16. Plaintiff repeats and incorporates the allegations set forth in the paragraphs above as if set forth in full herein.

17. Prior to the filing of the underlying state action by Defendant, Defendant knew or should have known that Plaintiff did not owe the amounts claimed in its lawsuit, and that it would not be successful in recovering \$1,585.25 plus interest from Plaintiff.

18. Despite having such actual or constructive knowledge, Defendant nevertheless instigated the underlying state lawsuit and made an unwarranted and improper use of process.

19. Defendant had an illegal purpose for the improper use of this process which was to force Plaintiff to pay money to Defendant which was not owed.

20. As a result of Defendant's abuse of process, Plaintiff has suffered emotional distress and embarrassment and damages in the form of the incurrence of legal fees to defend the state court action, and other damages undetermined at the time of filing of this Complaint.

21. Defendant's conduct in attempting to collect the amount of the debt claimed in the underlying state court lawsuit from Plaintiff, which is not owed, and its abuse of process in connection with the attempted collection of this debt, has been done with malice and ill will, and with a conscious and reckless disregard for the rights of Plaintiff which entitle Plaintiff to an additional award of punitive damages.

WHEREFORE, Defendant respectfully prays that this Court enter a judgment against Defendant in this Count II for actual damages, punitive damages, cost of this action, reasonable attorneys' fees, and any and all such additional and further relief as this Court deems just or proper under the circumstances.

Respectfully submitted,

A handwritten signature in black ink, reading "Dennis M. Devereux". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Dennis M. Devereux #28084

Attorney for Defendant

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